honestly believes, either from the guaranty of the manufacturers or other good and sufficient reasons, that the particular cider is non-intoxicating, then, in a prosecution for an illegal sale, the matters of guilty knowledge and intent should be submitted to the jury by way of defense. *Coury* v. *State* (Okl.), 200 Pac. 871 (1921). A sale of a concoction which the seller believes, and has a right to believe, is not an intoxicant, does not warrant a conviction, though the concoction is in fact an intoxicant. *Walker* v. *State*, 50 Tex. Cr. R. 495, 98 S. W. 843 (1906). Where it is expressly lawful to deliver intoxicating liquors for strictly medicinal or mechanical purposes, a common carrier, if it acts with reasonable care or due caution to avoid a violation of the statute, should not be deemed guilty if the whisky so delivered is not used for the prescribed purposes. *Wells Fargo & Co. Express* v. *State*, 130 Ark. 210, 197 S. W. 13 (1917). A hotel porter receiving as baggage of an incoming guest a suit case, which he had no right to inspect and which contained intoxicating liquor, cannot be held criminally liable, unless guilty knowledge or intent be shown, under a statute making it unlawful for any person to possess any intoxicating liquor within the State. *State* v. *Cox*, 91 Ore. 518, 179 Pac. 575 (1919). Under a statute permitting the sale of intoxicating liquors for medicinal purposes, a defendant, who has made no attempt to comply with the statute, cannot defend upon the ground of his good faith in making the sale for medicinal use in a prosecution for selling intoxicating liquors. *City of Montrose* v. *Price, supra.* A druggist, who, in good faith, has Jamaica ginger in his possession for sale, cannot be held criminally liable for having in his possession intoxicating liquor, if such preparation is unfit for use as a beverage; and where such prosecution is brought the State must show that the article was dealt in for use as a beverage or intoxicant. *Schemmer* v. *State* (Neb.), 180 N. W. 581 (1920). Defendants, proprietors of a grocery store, who sold in good faith Jamaica ginger containing eighty-eight per cent. alcohol for flavoring and medicinal purposes, did not violate the prohibition law where there was no evidence that the preparation was being used as a beverage. *Commonwealth* v. *Sookey* (Mass.), 128 N. E. 788 (1920).

Turning to the Virginia holdings it is found that the honest belief of a defendant that the beverage which he sold was of a kind which could lawfully be sold without a license was a matter to be urged upon the court, after conviction, in mitigation of sentence; but it was not a defense to a prosecution for selling intoxicating liquors. *Bracey* v. *Commonwealth*, 119 Va. 867, 89 S. E. 144 (1916). As to what is included under the term intoxicating liquors, see Acts 1916, p. 216.

LANDLORD AND TENANT—TENANT FROM YEAR TO YEAR BY HOLDING OVER WITH LANDLORD'S CONSENT IS NOT ENTITLED TO NOTICE TO QUIT.—The plaintiff was tenant of a suite of offices under a written lease for three or five years. The lease was renewed in writing several times, then the plaintiff occupied the premises for a number of years without any formal written lease, and always at the same rental. The original owners transferred the office building to the defendants, who continued to ac-

cept the rent, thus treating the plaintiff as a tenant from year to year. During a current year of such tenancy the defendants gave the plaintiff notice that unless he quit the premises within a month he would be put out. The plaintiff refused to quit, and sought an injunction to prevent eviction, on the ground that he was entitled to proper legal notice as the law allows any other tenant from year to year. *Held*, injunction denied. *Rice v. Atkinson-Deacon-Elliott Co.* (Mich.), 183 N. W. 762 (1921).

If a tenant for a term of years holds over after the expiration of his term, the landlord has the option of treating him as a trespasser or as a tenant for another year, that is as a tenant from year to year, upon the terms of the former lease as far as applicable. *Peirce* v. *Grice*, 92 Va. 763, 24 S. E. 392 (1896); *Streit* v. *Fay*, 230 Ill. 319, 82 N. E. 648, 120 Am. St. Rep. 304 (1907); *Minton* v. *Steinhauer*, 259 Mo. 51, 147 S. W. 1014 (1912). Tenancies from year to year are not terminable at the will of either party, but once commenced continue until terminated by the proper legal notice. *Doe* v. *Spence*, 6 East 120 (1805); *Stedman* v. *McIntosh*, 26 N. C. 291, 42 Am. Dec. 122, and note p. 126 (1842); *Ganson* v. *Baldwin*, 93 Mich. 217, 53 N. W. 171 (1892); *King* v. *Wilson*, 98 Va. 259, 35 S. E. 727 (1900); *Zabriskie* v. *Sullivan*, 82 N. J. Law 545, 77 Atl. 1075 (1910); *Marks* v. *Goria Bros.*, 121 Va. 491, 93 S. E. 675 (1917).

In the instant case the court drew a distinction between tenancies from year to year arising from leases for indefinite terms and those arising from a holding over by the tenant after the expiration of a lease for a specified term, declaring that notice was required to terminate the former but not the latter. But the two cases mainly relied upon in reaching this decision did not go near so far. They held that a tenancy from year to year arising by the tenant's holding over after the expiration of a lease for a specified term could be terminated at the end of any current year of such tenancy. In other words, these cases held that the landlord could not be forced to lease for another year against his will. Obviously, this is quite different from allowing the landlord, as did the Michigan Court in the instant case, to terminate the tenancy without proper legal notice at any time during a current year of the term. *Teft* v. *Hinchman*, 76 Mich. 672, 43 N. W. 680 (1889); *Gladwell* v. *Holcomb*, 60 Ohio St. 427, 54 N. E. 473, 71 Am. St. Rep. 724 (1899).

At common law the period of notice required to terminate an estate from year to year is six calendar months, expiring always at the end of some current year of the tenancy. *Doe* v. *Spence*, *supra*. This period has been changed by statute in many of the States, but practically all of them still require notice for an appreciable length of time. In Virginia the statutory requirement is that "a tenancy from year to year may be terminated by either party giving notice, in writing, prior to the end of any year of the tenancy, for three months of his intention to terminate the same." Va. Code 1919, § 5516. Prior to the revision of the Code in 1919, a distinction was made between land situated in a city or town and land situated outside of a city or town. If the land was situated in the country, six months' notice was required; if in a city or town, three months' notice was necessary. The revision abolishes the distinction and prescribes a uniform notice of three months.

The decision in the instant case is out of line with the weight of authority and the opinion of leading text writers on real property; and, furthermore, it is interesting to note that there was a strong dissenting opinion supported by two of the five judges sitting at the trial.

See 2 MINOR, INSTS., 201; 1 MINOR, REAL PROP., § 391; TAYLOR, LANDL. & TEN., § 469.

MASTER AND SERVANT—MASTER LIABLE FOR NEGLIGENCE OF TRUCK DRIVER RETURNING FROM PERSONAL ERRAND TO RE-ENGAGE IN MASTER'S BUSINESS. —A master ordered the driver of a motortruck to go from a mill to the freight yards. After the truck was loaded, the driver discovered some pieces of waste wood and took them to the house of his sister, a few blocks in the opposite direction from the mill. After unloading the wood at the house of his sister the driver started to return to the mill on a course which would take him past the entrance to the mill, and on his way to the freight yards. He negligently ran down an infant in the space between his sister's house and the entrance to the mill. A suit for damages was brought for the infant against the master, upon the grounds that during the return, the freight yards then being the driver's destination, the driver was upon the master's business. *Held*, the master is liable. *Riley* v. *Standard Oil Co. of New York* (N. Y.), 132 N. E. 97 (1921).

It is the well established general rule that the master is liable only for the acts of his servant done "within the scope of his employment". And where a servant, while engaged in his master's service, temporarily departs therefrom, the master is not liable for his acts during such time of departure. *McCarthy* v. *Timmins*, 178 Mass. 378, 59 N. E. 1038, 86 Am. St. Rep. 490 (1901); *Savannah Electric Co.* v. *Hodges*, 6 Ga. App. 470, 65 S. E. 322 (1909); *Symington* v. *Sipes*, 121 Md. 313, 88 Atl. 134, 47 L. R. A. (N. S.) 662 (1913). But the courts have frequently recognized the rule that where the servant has made a temporary departure from the service of the master, and the object of that departure has been accomplished and the servant re-engages in the discharge of his duty, the responsibility of the master for the servant's acts immediately attaches. *Gerarty* v. *National Ice Co.*, 16 N. Y. App. Div. 174, 44 N. Y. S. 659, affirmed 160 N. Y. 658, 55 N. E. 1095 (1897); *Missouri, etc., R. Co.* v. *Edwards* (Tex. Civ. App.), 67 S. W. 891 (1902); *Barmore* v. *Vicksburg, etc., R. Co.*, 85 Miss. 426, 38 So. 210, 3 Ann. Cas. 594, 70 L. R. A. 627 (1905).

In some jurisdictions, however, this doctrine is not followed because the courts deemed it unjust to hold the master liable. *Fleischner* v. *Durgin*, 207 Mass. 435, 93 N. E. 801, 20 Ann. Cas. 1291, 33 L. R. A. (N. S.) 79 (1911); *Hartnett* v. *Gryzmish*, 218 Mass. 258, 105 N. E. 988 (1914); *Patterson* v. *Kates*, 152 Fed. 481 (1907).

In the instant case the Court, upon review, followed the general rule noted above and held that with the journey back to the mill begun, the driver again engaged in the master's business, and this point was not necessarily the place from whence the deviation began. There is abundant authority for this view, and it is generally followed by the